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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Alfred C. Sikes
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Re: Time for a Change in FM Allocation Policy -- A Policy at Odds with Contemporary FCC Regulation of Radio Broadcasting
MM Docket No. 90-283
RM-7932
RM-7933

Dear Chairman Sikes:

Earlier this month the Commission's revised radio station ownership rules became effective -- heralding a new regulatory regime aimed at improving the industry-wide health of a struggling radio industry. NAB again applauds the FCC's leadership in that proceeding and shares the Commission's expectation that station consolidation and enhanced station efficiencies will help advance the goals of public responsiveness through radio broadcast programming. But, we are writing you today about a serious defect in a related set of Commission policies -- policies that well can counteract the positive steps the FCC recently has taken.

In large part, the Commission's radio ownership actions were premised on the severe economic and financial distress of the radio industry -- phenomena brought about, in large part, by the vast number of radio stations and other competing media. This overabundance of radio station competitors -- and competition -- was documented in the agency's "Overview of the Radio Industry" staff report, issued in January, 1992, and in both the radio ownership <u>Report and Order</u> and the <u>Memorandum Opinion and Order</u> on reconsideration. The Commission's conclusions in this regard are painfully accurate. The latest NAB financial survey of radio stations has found that nearly two-thirds of all commercial radio stations lost money during 1991.

Plain and simple, the Commission's ownership rule revisions primarily were in response to the damage caused by FCC radio station allocations policies in effect over the last decade. On many occasions, various Commissioners and top FCC staff have opined that "Docket 80-90 was a mistake." NAB agrees.

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But the term "Docket 80-90" applies not only to the dropping in of nearly 700 new station allotments in 1985. The legacy of Docket 80-90 includes the entirety of the FCC's FM current allocations policy, particularly the revised interference standards which have been used to create hundreds and hundreds of additional new stations to the radio landscape. These standards recently were amended again to allow the shoe-horning in of yet more stations through the use of FM directional antennas.

Turning around the American radio industry's financial condition -- and improving its overall potential for local public service -- demands a comprehensive approach. By the ownership rule revisions the Commission has tackled one important side of the problem. But, the agency cannot ignore the fact that its current FM allocations policy acts to create the same kind of oversaturation conditions that the ownership rules were designed to help alleviate. That is, benefits enuring from the ownership rule changes will only be diminished by FCC allocations policies that still are premised on the faulty notion that "more is always better."

For AM radio the Commission has made the right choices. The new AM allocations policy is designed not to add to the overall number of stations but to improve existing stations' technical and operational service. Through tighter interference standards, reduction of congestion through stations' migration to the expanded band and new incentives for creating fewer, not more, AM facilities, the AM medium truly will be improved. For FM, no such enlightened choices yet have been made by the Commission. Indeed, the current allocations policy still works toward the addition of more and more stations, regardless of the economic condition of the medium as a whole, let alone individual radio markets.

One prime example of the misguided -- and injurious -- nature of existing FM allocations policy is the recent FCC FM channel allotment decision for the "East End" of Long Island, New York. (See, Report and Order in MM Docket No. 90-283, released July 13, 1992.) Here the Mass Media Bureau, essentially on its own motion, dropped in four new FM allotments -- an allotment total not sought by the parties.

In the context of a channel allocation proceeding, four parties were competing for a single new channel allotment -- in a geographic area where the existing radio stations were experiencing financial distress and market oversaturation. Indeed, four additional construction permits are currently outstanding in the area and two of the existing radio facilities in the East End are engaged in time brokerage arrangements, reportedly as a way of keeping from going dark.

At no time during the course of the proceeding did the Commission give notice that it was considering dropping in four new channels. Nor were each of the parties to the proceeding indicating a desire to operate one of four stations that might be added to the already saturated market. But, the Commission's staff, finding that four new channels could be added technically to the general area -- then added those channels through the Report and Order. Several petitions for reconsideration and a motion for stay are currently pending in that proceeding. No one has opposed the reconsideration petitions or the stay motion.

While we've pointed to this one example, it is the entirety of the Commission's FM allocation policy that needs review. Fortunately, the Commission now has before it the vehicle for making critically-needed changes to this policy.

Earlier this year NAB filed a Petition for Rule Making (RM-7933) asking for a comprehensive review of the agency's current FM allocations policy. A companion NAB petition (RM-7932) asked for a temporary suspension of most new station allotment activity pending Commission completion of the overall policy review in a rule making. Following the FCC's March 20, 1992, placement of these petitions on FCC public notice, substantial support was voiced for the notion of reexamining the policy foundations for the Commission's FM allocations policy.

In these petitions, NAB has asked the Commission to focus its energies -- and its radio allocations policy -- on the improvement of existing broadcast facilities, enhancing their ability to provide local public service. We have urged the Commission to undertake a market economic analysis prior to adding new stations. These NAB petitions also ask the FCC to take related steps to advance minority ownership of radio broadcast facilities through, *inter alia*, the expansion of both the existing minority tax certificate program and the current distressed sales policy.

Mr. Chairman, the time for the Commission to reassess this faulty and damaging FM allocations policy is long overdue. If the FCC's goal truly is to improve the economic condition and service potential of radio, the agency must not further delay this review.

We welcome your response to this letter and hope that we can look toward the inauguration of Commission proceedings designed to complement -- not work against -- the benefits the

Commission has granted the industry through its radio ownership rule revision.

Respectfully submitted,

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Executive Vice President & General Counsel

Barry D. Umansky
Deputy General Counsel

cc: FCC Commissioners
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Parties to MM Docket No. 90-283
File of MM Docket No. 90-283
Files of RM-7932 and RM-7933